been made for accelerated succession to the assets of the deceased.

The Appellant will have the costs of this appeal.

Order accordingly.

Solicitors: *Varughese & Co., Tan & Tan.*

WAN ABDUL RASHID v. S. SIVASUBRAMANIAN

[O.C.J. (Vohrah J.) March 8, 1984]
[Kuantan – Civil Suit No. 91 of 1979]

Tort – Defamation – Imputation of corruption against Registrar of Sessions Court – Whether words complained of were in fact uttered by defendant and communicated to third party

Legal Profession – Defamation – Imputation of corruption against Registrar of Sessions Court – Wrongful act to be strongly deprecated – Damages of $5,000 awarded.

The plaintiff in this case was the Registrar of the Sessions Court in Kuantan whilst the defendant was an advocate and solicitor practising in the same town. The plaintiff alleged that the defendant defamed him on February 1979 at about 11.00 a.m. at the Kuantan Sessions Court Registry in the presence of members of the Court staff and of the public by branding him as a corrupt person when he was alleged to have said:

"Oh, that corrupted fellow, he needs to be taught a lesson ... I am going to get the BSN and then he would know ... I am going to get the whole lot of you fellows because you fellows are nothing but corrupted buggers right from the Registrar".

The issue before the court was whether the words complained of were in fact uttered by the defendant and if they were, whether they were communicated to third persons.

Held: (1) on the evidence presented, there was publication by the defendant of the words attributed to him or of words to similar effect;

(2) the plaintiff as the Registrar of the Sessions Court holds an office of trust in which the public must have confidence as to his integrity and probity if the judicial system is to function properly. To impute corruption against any officer of the Court without evidence to support it is a wrongful act which should be strongly deprecated;

(3) the plaintiff as a government servant drawing a regular salary should not benefit financially from these proceedings but is entitled to be vindicated in the eyes of the public and consoled for the wrong done to him. Having regard to all the circumstances of the case, a sum of $5,000 would be a fair and adequate sum to be awarded as damages to the plaintiff.

Cases referred to:

(1) *John Tan Chor-Yong* v. *Lee Chay Tian* [1971] 1 M.L.J. 240;
(2) *Hasnul bin Abdul Hadi* v. *Bulat bin Mohamed & Anor.* [1978] 1 M.L.J. 75.
(3) *John Lee & Anor.* v. *Henry Wong Jan Fook* [1981] 1 M.L.J. 108.
(4) *C.S. Wu* v. *Wang Look Fung & Ors.* [1981] 1 M.L.J. 178.

CIVIL SUIT.

Joseph Au Kong Weng for the plaintiff.
Raja Abdul Aziz Addruse for the defendant.

Cur. Adv. Vult.

Vohrah J.: The plaintiff (P.W.1) is the Registrar of the Sessions Court in Kuantan whilst the defendant (D.W.1) is an Advocate & Solicitor practising in the same town. The plaintiff alleges that the defendant defamed him on February 20, 1979 at about 11.00 a.m. at the Kuantan Sessions Court Registry in the presence of members of the Court staff and of the public by branding him as a corrupt person when he is alleged to have said:

"Oh, that corrupted fellow, he needs to be taught a lesson... I am going to get the BSN and then he would know ... I am going to get the whole lot of you fellows because you fellows are nothing but corrupted buggers right from the Registrar."

It has been conceded by the defence that these words are by their very nature defamatory. There is also no dispute that if the words were uttered they refer to the plaintiff. The defence however denies that these words were ever spoken or published by the defendant. What I have to decide is whether the words complained of were in fact uttered by the defendant and if they were, whether they were communicated to third persons.

The plaintiff has relied on several witnesses to establish his case. As one M. Rajalingam (P.W.3) appears to have been the initiator of the proceedings which have been unfolded in Court I shall deal with his evidence first.

Rajalingam testified that he was then the Tamil interpreter at the Kuantan Sessions Court and on the day and at the time in question he was working at his desk in the registry when he noticed the defendant at the counter. The defendant called out to him by name whereupon he left his seat and approached the counter. The defendant then told him that interpreters were approving draft orders and that he had not seen such draft orders

in all of his 15 years of practice. In reply Rajalingam stated that he did not actually approve draft orders but only vetted them after which they were sent with the relevant files to the Registrar who was the person in whom was vested the authority to revoke, amend or sign such draft orders. It was in response to this statement that the defendant in a raised voice uttered the words complained of beginning with the words, "Oh, that corrupted fellow ..." at the same time pointing a finger towards the Registrar's Chambers. Rajalingam further stated that the defendant also made some unsavoury reference to a process-server named Aziz and then left the registry. Rajalingam then went back to his seat somewhat dazed because no such incident had even happened to him before. He then complained of the treatment he received to the court bailiff Sundararaju s/o P.Pillai (P.W.4) who informed him that fortuitously he had taken down what had been said by the defendant. Rajalingam read through what had been jotted down by Sundararaju and found it to be correct. With this hand-written note Rajalingam then proceeded straightaway alone to see the President of the Sessions Court Wan Majid bin Wan Hamid (P.W.7) as he thought the remarks that had been made of the plaintiff by the defendant were improper. In the President's Chambers Rajalingam related what had occurred and showed Sundararaju's jotting but was told to make a report of the incident in writing. Rajalingam did so and submitted his written report P.1 the next day to the President. On reading through P.1 the President cautioned him as to the seriousness of the statements made therein and enquired if he was prepared to swear to their veracity. Rajalingam answered in the affirmative in the presence of the plaintiff who had by then been summoned to the Chambers. Rajalingam then left the Chambers.

Wan Majid, who is now a practising Advocate & Solicitor, in his evidence confirmed that Rajalingam had seen him in his Chambers some time before the lunch-break on February 20, 1979 complaining about the defendant having "created an incident" at the registry counter. He had the impression that Rajalingam was quite excited and that the incident had occurred within the hour. He stated that Rajalingam attempted to read from a hand-written note which had allegedly been made by some third person but he stopped him as he thought that the allegations made against the defendant were serious and ought to be in writing. The next day Rajalingam saw him again in his chambers and tendered P.1. After reading P.1 and questioning Rajalingam he asked Rajalingam if he was prepared to swear as to the truth of its contents and was assured by Rajalingam that he was. When he read P.1 he made some markings thereon and called for the plaintiff who on being apprised of the allegation against him was very unhappy and denied being corrupt. Wan Majid then asked the plaintiff if he would accept an apology from the defendant and the plaintiff gave him the impression that he could intercede with a view to settling the matter between the defendant and the plaintiff. Accordingly he got in touch with the defendant by telephone a day or two later and on meeting him subsequently he informed the defendant of the contents of P.1. The defendant denied that he was ever present in Court on February 20, 1979 and that accordingly he could not have made the allegations attributed to him. Wan Majid said that he was not convinced by this explanation and asked the defendant how he could have been certain of not having been in Court on that day. The defendant's reply, whilst he referred to his diary, was that according to his diary he had no business in Court on that day and therefore could not have been at the registry. In the circumstances Wan Majid did not think any purpose would be served by his personal intervention in pursuing the matter further with a view to seeking an apology and then made a note on P.1 to the effect that the choice of action with regard to the incident was left entirely to the plaintiff and Rajalingam.

Syed Mokhtar bin Syed Muhammad Al Haj (P.W.2) who was the Bahasa interpreter at the Kuantan Sessions Court at the relevant time stated in evidence that he witnessed an exchange of words between the defendant and Rajalingam on the day in question as he was seated in the registry about 17 feet away from the counter where a few members of the public were present. He was not in a position to recall the words that were used but his attention was drawn to the conversation when the defendant alleged that the Court staff including the Registrar were corrupt. At that point he had to leave his seat to answer the call of nature and when he returned the exchange was over. He was angry at the time because he felt the allegation of corruption against the Court staff collectively which included him was unjustified and he also noticed that Rajalingam was upset and angry. He remembered the day of the incident because he had noted it down.

Sundararaju testified that at about 11.00 a.m. on February 20, 1979 whilst he was at his

desk in the registry attending to the list of guests to be invited for the official opening of a new Court-house in Pekan, the defendant walked up to the counter and called Rajalingam who then approached the counter. The defendant enquired about some orders and in the course of the conversation between him and Rajalingam the alleged words complained of were uttered by the defendant. Sundararaju explained that he made the note of what was said by the defendant on the back of the guest-list P.8 because of the serious allegation levelled against the Registrar. These utterances were made in the presence of members of the public and Court staff. When the defendant uttered the words he recorded, the defendant looked annoyed and spoke loudly but not very fast. When the defendant left the registry Rajalingam walked back to his table looking angry and shocked. Rajalingam spoke to him expressing surprise at what had occurred and he gave Rajalingam assurance that he had taken down on P.8 what had been said. About 20 minutes afterwards Rajalingam walked away with P.8 to report the incident to the President. Sundararaju also testified that he did not know the defendant's profession on the day in question as he had then been in the Kuantan Sessions Court for only five days having just been transferred from the Subordinate Courts in Kuala Lumpur.

Chiang Chew Kok (P.W.5), who ran a transport company in Kuantan, testified that on the morning in question he was at the registry to pay a fine in respect of a traffic offence committed by one Poon Kiang Meng, a friend of his. Whilst waiting to collect his receipt he saw the defendant whom he knew quite well at the counter of the registry speaking in English in a loud voice to an Indian man who could have been Rajalingam. He could not understand what was said.

Mohd. Bustaman bin Hassan (P.W.6), a process-server of the Kuantan Sessions Court, said in evidence that he was also present on the morning in question when he recalled an argument between the defendant and Rajalingam. He was attending to his work at his desk in the registry about 27 feet away from the counter when he saw the defendant approach the counter of the registry and call Rajalingam. A conversation ensued between the two and this developed into an argument during which he heard the defendant say quite loudly that the Court staff including the Registrar were corrupt. Although he took his Sijil Rendah Palajaran (Lower Certificate of Education) in Malay he had studied English from Form I to Form III and understood the words used by the defendant attributing corruption to the Court staff and the Registrar. He said he was upset by the words used. He also said that he had been issued with a subpoena to attend Court that morning to give evidence.

Mokhtar bin Yusof (P.W.9), a typist attached to the Kuantan Sessions Court, also testified to having been present in the registry and to having seen the defendant come in and speak with Rajalingam on the morning in question. He also heard what was said by the defendant at the registry counter that morning. He had done his schooling in the English medium and had passed Form V and understood what was said. He was upset when he heard the accusation that the Registrar was corrupt and noticed that Rajalingam expressed some emotion after he had returned to his table and was speaking to Sundararaju.

The evidence of the defence in rebuttal of publication was given by the defendant and by one Ding Nguk Kong (D.W.2) who at the material time was the President of the Foo Chow Association, Kuantan.

The defendant's version of the events on the morning of February 20, 1979 can best be given in his own words as follows:

"I was in the Court building on the morning of February 20, 1979. I was in the registry of the Subordinate Courts that morning. I do not know exactly the time but it was after I had attended open court at the Magistrates' Court. That morning I had appeared in two matters in the Magistrates' Court where my client in one case had been charged for gaming in a common gaming house and in the other case my clients were charged as occupiers of a place used as a common gaming house. They were inter-related cases which came up before the Magistrate. I went to the registry because my clients did not know where to execute the bail bonds and I took them where the bail bonds were to be executed. I pointed the particular court official in charge of them. All the accused-clients accompanied me to the registry. There was one Mr. Ding, the then President of the Foo Chow Association, amongst the clients. He was also one of the accused. All my clients belonged to the Foo Chow Association. In one case MA.93/79 there were 11 accused persons charged under S.6(1) of the Common Gaming Ordinance. In MA 94/79 two persons were charged including Mr. Ding Nguk Kong. This was for an offence under S.4(1)(b) of the same ordinance. I showed Mr. Ding the particular court staff who would attend to the bail bond and then I left. I was in the registry for about 5 minutes. I was not in the registry again at any time that morning. During those 5 minutes no argument occurred between me and P.W.3. I have heard the evidence of P.W.3 in Court. What was said by him in Court did not take place."

The defendant in other words denies having exchanged any harsh words with Rajalingam and also having uttered the words attributed to him that morning by Rajalingam.

The defendant's only witness Ding confirmed that he and others appeared in the Magistrates' Court on the morning in question and that they had retained the defendant as Counsel. He added that after they had been granted bail by the Magistrate they all went to the registry and although he could not remember who accompanied all of them there he thought the police did accompany them for the purpose of getting their bail bonds executed.

After watching all the witnesses and listening to their evidence I am more than satisfied on a balance of probabilities that the defendant did on the morning of February 20, 1979 publish the words complained of in respect of the plaintiff which imputed that the plaintiff was a corrupt person. I am satisfied that the incident occurred as deposed to by Rajalingam. There is no dispute that the defendant was in Court on the morning in question and the then President of the Sessions Court Wan Majid confirmed that Rajalingam had gone to see him that morning just before the lunch-break to complain of an incident which occurred earlier on that day involving himself and the defendant. There is also no dispute that the defendant was on good terms with Rajalingam both in their social dealings and in their official dealings. It has been suggested that the whole incident was fabricated because of resentment on the part of Rajalingam arising from complaints which had been made by the defendant to the Judge about the unsatisfactory manner in which the registry was run but this suggestion has not been borne out by evidence of any detriment having been suffered by Rajalingam or other members of the registry staff as a result of the complaints. Apart from the plaintiff there is no evidence that Rajalingam or any of the other Court staff who gave evidence on behalf of the plaintiff had any knowledge of the complaints. I can find no reason to believe that Rajalingam had concocted such a serious allegation against the defendant especially bearing in mind that the defendant was then a senior member of the local bar and was a person who would certainly not have taken such a charge lightly. I have also examined the cursive handwriting in P.8 very carefully and am of the view that it was possible for Sundararaju to have taken down in long hand what was said contemporaneously with the uttering of the words. I cannot believe that Sundararaju would go to the extent of lying against the defendant when he was a very recent newcomer to the registry staff having only five days earlier been transferred to the Kuantan Sessions Court from the Subordinate Courts in Jalan Duta, Kuala Lumpur. Sundararaju testified that on the day in question he actually did not know who the defendant was and an attempt was made by the defence in cross-examination to show that this could not be so as it was put to Sundararaju that immediately after his transfer to Kuantan he had called at the defendant's office with regard to an execution matter and had told the defendant that he knew of the defendant's political activities from the newspapers. Sundararaju denied this but no rebuttal evidence was brought by the defence to prove that Sundararaju was not telling the truth. I can see no reason why Sundararaju should lie about the events of that day or the fact that he had taken down on P.8 what was said by the defendant. I believe him when he said that he was attending to the list of invitees for the opening of the Court-house in Pekan and that P.8 was in fact written on at the time the words were uttered after reference was made to the Registrar. The President of the Sessions Court confirmed that when Rajalingam saw him that morning he did have in his possession "a piece of paper" the contents of which, he noticed, were hand-written. I am satisfied that P.8 is a genuine record of part of what was said by the defendant on the morning in question and I find Sundararaju's reason for taking down the words complained of because of the allegation against the plaintiff to be plausible. The presence on the morning in question of the other registry staff, namely Syed Mokhtar, Bustaman and Mokhtar Yusof, was also not disputed. Syed Mokhtar, a very senior interpreter, appeared to me to be a reluctant witness. Bustaman although still stationed in Kuantan came to give evidence because he had been issued with a subpoena to do so. Mokhtar Yusof did not want to get involved in the exchange that morning between the defendant and Rajalingam and had removed himself to the store-room. All these three witnesses were cross-examined fully on their respective accounts of the incident but they were, in my view, not shaken or discredited in any way. I find them to be reliable witnesses and have no reason to doubt their testimony after having observed them on the witness-stand.

On a balance of probabilities I find the defendant's evidence less reliable for, *inter alia*, the following reasons. In his evidence-in-chief he ex-

plained that he went to the registry on the morning in question because his clients did not know where to execute the bail bonds and he had to take them there to show them who the official was who looked after those formalities. When in cross-examination however it was put to him that police personnel invariably accompanied accused persons from the Court to the registry to get their bail bonds executed he modified his explanation somewhat to say that he often accompanied his clients, especially Chinese clients, for the purpose of getting their bail bonds executed because they "have a phobia about being put into the lock-up and they want their Counsel to be around so that they do not get pushed into the lock-up, i.e., the Court-cells, whilst waiting for the bail bonds to be executed." This amplification of his original explanation that his reason for accompanying his clients was merely to show them where and by whom the bail bonds were prepared appears to me to be too facile an explanation in cross-examination. The defendant indicated in his evidence that the first time he ever knew of any complaint against him was when he had a discussion with the President of the Sessions Court in Chambers after an accidental meeting in the corridor between the registry and the Sessions Court-room. He denied that at this discussion the words complained of were read out to him by the President. Wan Majid, the then President of the Sessions Court, however testified that he remembered having telephoned the defendant and having informed him of Rajalingam's complaint in P.1 one or two days after his meeting with Rajalingam and the plaintiff in his Chambers on February 21, 1979. Wan Majid also remembered having met the defendant in person and having apprised him of the complaint against the defendant as contained in P.1 but the defendant denied having been in Court on that day. Wan Majid said further that he was not at the time convinced of the defendant's denial and when he questioned the defendant specifically as to how the defendant could have been certain that he was not in Court the defendant referred to his diary and said that from the entries in the diary he was not in Court on the day in question. This seems to me an unusual answer for the defendant to make as if he did not utter the words complained of I would have expected a forthright answer from him plainly denying having made the allegation against the Registrar and his staff instead of an explanation that because he was not in Court on that day he could not therefore have uttered the words complained of. The defendant's answer seems to me to be prevarication as a straight no would have sufficed in the circumstances. I also found it hard to believe that the defendant only discovered that he had been in Court on February 20, 1979 after he had listened to Rajalingam's evidence during the trial on July 7, 1983 when Rajalingam mentioned the presence of Ding in Court on the morning in question and that had prompted the defendant to search the files relating to Ding's personal and company matters whereupon he found out, for the first time, that he had actually been in the Kuantan Magistrates' Court on that particular day. Other answers of the defendant, in my view, also indicate prevarication on his part. He did not deny having received a telephone call from the President of the Sessions Court but claimed that he just did not remember having received one from the President for a meeting or discussion with him. He apparently made a note of the dates when he was away attending the Bar Council meeting in Kuala Lumpur and of other engagements for the period from February 20, 1979 to and including February 28, 1979 when he had a special meeting of the Pahang Bar Committee relating to the alleged incident and yet he made no note of his meeting with the President on a matter as serious as this. Surely even an ordinary layman would have taken note of the date of a meeting as important as the one the defendant had with the President and would also have ascertained positively the date of the incident well before the trial began on July 7, 1983, the day when, the defendant claimed, he decided to look up Ding's files.

For all the above reasons I do not think on a balance of probabilities that the defendant's testimony can be relied upon.

An attempt was made in the evidence for the plaintiff to put the defendant in a bad light through the evidence of Rajalingam and of one E.Thavanayagam (P.W.10) in relation to the bankruptcy notice P.7 which, it was claimed, was served upon Rajalingam on January 20, 1982 at the instance of the defendant's firm contrary to the verbal undertaking of one Tan Ah Lan (P.W.11) and without instructions from the judgment-creditor Syarikat Garuda Snd. Bhd. of which Tan was the managing-director. I do not consider this piece of evidence relating to the implied ill-intent of the defendant pertinent in the circumstances as intention is not, in my opinion, relevant in this case. However, Counsel for the defendant has contended that Rajalingam should be considered "a witness of untruth" because the plaintiff's own witness Tan had testified that Thavanayagam did

not accompany Rajalingam to his house on the night of January 20, 1982 when the endorsement on P.7 (to the effect that Syarikat Gardua Sdn. Bhd. had not given instructions to issue the bankruptcy notice against Rajalingam and that it would be withdrawn) was signed by Tan so that Rajalingam could not be telling the truth when Rajalingam (and Thavanayagam) stated in evidence that Thavanayagam was his companion at Tan's house that night. Counsel's submission was that failure to recall Thavanayagam who was present in Court to rebut what Tan had testified must cast a doubt on Rajalingam's credibility. I have considered this question carefully and also that part of Tan's evidence where he said that the friend who accompanied Rajalingam was "a South Indian, tall and skinny." Thavanayagam whom I watched very closely, in my view, fitted that description very well and I have no reason to doubt Thavanayagam's evidence that he was there and had written out the endorsement at Tan's request. After considering the sum total of the evidence of Rajalingam, Thavanayagam and Tan, I am of the opinion that Tan must have been mistaken about who the companion of Rajalingam was that night.

Counsel for the defendant also contended that the failure on the part of Counsel for the plaintiff to cross-examine the defence witness Ding on what Rajalingam had said in evidence to the effect that Ding was in the company of the defendant and had giggled on hearing the words complained of being uttered by the defendant operated to bring into application the statutory presumption under section 114(g) of the Evidence Act, 1950 affecting the credibility of Rajalingam. Ding appeared to me to be a very reluctant witness who said both in examination-in-chief and in cross-examination that he could not remember who had accompanied him and his co-accused (all members of the Kuantan Foo Chow Association) to the registry for the execution of their bail bonds. That being the case I do not think there was any obligation or onus on the part of Counsel for the plaintiff to examine him further. Nor do I think that any adverse inference can be drawn against Rajalingam's credibility or the plaintiff's case as a whole from the fact that Counsel for the plaintiff declined to cross-examine Ding further than he did.

For the reasons I have stated I find that there is no foundation in the defence contention that the incident was fabricated because of resentment by Rajalingam and his colleagues on account of complaints made by the defendant against the unsatisfactory manner in which the registry was run. On the evidence presented I find that there was publication by the defendant of the words attributed to him or of words to similar effect.

What seems clear from all the evidence that has been unfolded in Court is that there were delays on the part of the registry especially in serving process and in replying to correspondence from solicitors and steps were taken by the defendant both in his personal capacity and in that of Chairman of the Pahang Bar Committee to bring these matters, among others, to the attention of the Judge in October 1978. It appears that the defendant perceived no improvement or noticeable improvement in the workings of the registry and on the morning in question apparently gave vent to his consequent annoyance and frustration triggered by what he thought was irregular practice for interpreters to approve draft orders.

It is regrettable that these proceedings have had to take place because, in my view, had good sense prevailed and overcome pent-up feelings this suit could very well have been settled amicably as it related in essence to an internal dispute involving two officers of the Court, a Registrar of the Sessions Court and an Advocate & Solicitor. Whatever the provocation, however righteous the indignation, no one is entitled to make insinuations or allegations which are defamatory of another. Such insinuations and allegations are so easy to make and the defendant who is an experienced legal practitioner should have known better. The plaintiff as the Registrar of the Sessions Court holds an office of trust in which the public must have confidence as to his integrity and probity if the judicial system is to function properly. To impute corruption to him in his capacity as Registrar is to say that justice can be bought. Our judicial system can only enjoy the confidence of the public if the integrity and impartiality of the Court staff and the Bar are not in question and public faith in our judicial system will only continue if the public at large is assured of these qualities. To impute corruption against any officer of the Court without evidence to support it is, in my opinion, a wrongful act to be strongly deprecated.

I must at this point state that what the plaintiff did in sending the letter D.6 dated June 13, 1983 in his capacity as Registrar of the Kuantan Sessions Court to six persons including Poon (on whose behalf Chiang had appeared in Court on February 20, 1979) as the accused in several summons cases

requesting them to attend at his Chambers on June 25, 1983 for the purpose of an "inquiry" in order to question them in the presence of his solicitor about this incident concerning a matter in which he was personally involved and which related to the present suit was not proper as it reflected, in my view, an abuse of his official position. This sort of action should not have taken place and must not be repeated.

There now remains only the question of damages. Counsel for the plaintiff has for the Court's guidance referred to four cases, namely *John Tan Chor-Yong* v. *Lee Chay Tian*[1], *Hasnul bin Abdul Hadi* v. *Bulat bin Mohamed & Anor.*[2], *John Lee & Anor.* v. *Henry Wong Jan Fook*[3] and *C.S.Wu* v. *Wang Look Fung & Ors.*[4] I have considered the occupations of the defamed parties concerned in these four cases and the amounts awarded to them. I have also considered the principles which should guide the Court as laid down in *Gatley on Libel and Slander, Seventh Edition, paragraph 1358.* Counsel for the plaintiff has indicated that he has instructions to leave the question of quantum entirely to the Court's discretion. I take the view that the plaintiff as a government servant drawing a regular salary should not benefit financially from these proceedings but is entitled to be vindicated in the eyes of the public and consoled for the wrong done to him. Having regard to all the circumstances of this particular case I am of the opinion that the sum of $5,000/- would be a fair and adequate sum to be awarded as damages.

Accordingly I enter judgment for the plaintiff for $5,000/- with costs.

Claim allowed.

Solicitors: *Malek & Joseph Au; Rithauddeen & Aziz*

BRUNEI REPORT

PUBLIC PROSECUTOR v. CHONG ING CHU

[A.Cr. J. (Garcia J.) December 8, 1982]
[Bandar Seri Begawan – Criminal Appeal No. 15 of 1982]

Criminal Law & Procedure – Theft – Charge of intention to commit theft – Possession without lawful excuse of house-breaking implements – Magistrate applied wrong standard – Penal Code, ss. 379 & 447 – Minor Offences Enactment (Cap. 30), s.24(e).

The respondent was charged with entry upon property in the possession of another and with intent to commit an offence of theft, an offence punishable under sections 379 and 447 of the Penal Code. He was also charged for having in his possession without lawful excuse housebreaking implements, viz., one garden scoop, one Sonca torchlight, one set of multi-purpose lunch set and one bottle-opener fitted with knife and spike, under section 24(e) of the Minor Offences Enactment (Cap.30).

The evidence against the respondent was that a witness first saw him walking back and forth, hanging around in the compound of a flat and at that time he was shining a torch at all the cars in the garage. The witness became suspicious after seeing this and so he approached the respondent. He found out the respondent's name and noticed that the respondent was carrying a knapsack on his back. He asked the respondent what he was doing there and the reply he received was that he was searching for a wedding ring which he had dropped the previous day whilst jogging in that area.

The witness looked into the knapsack and found one baseball hat, one curtain, one garden scoop, a bicycle pump, a green cap, 2 pocket knives, one of which was a bottle-opener fitted with a knife and spike, and when he asked the respondent what he was doing with those articles at that time, the respondent gave no reply whatsoever.

The learned Magistrate considered the items mentioned in the charge could not be used for the purpose of housebreaking and held that "a garden scoop, a multi-purpose lunch set, a bottle-opener fitted with knife and spike ... would not be able to do the job of opening a window or door and would not come under the ambit of house-breaking implements". He held that "a person would not attempt to commit theft at 5.15 a.m. in an open space. The accused used a torchlight. He could easily be detected by people around as he was by the Inspector. If he had the intention of committing theft from the car, the torchlight he should have used would have been a pencil torchlight not like the torchlight produced in Court". The Public Prosecutor appealed against the above decision.

Held, allowing the appeal: a *prima facie* case has been made out against the respondent in respect of the first and second charges and accordingly he should have been asked by the Magistrate to answer the two charges.

Cases referred to:

(1) *R.* v. *Patterson* [1962] 1 All E.R. 340.